IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 14 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JESA NATHA DABHI

Versus

STATE OF GUJARAT

Appearance:

1. Second Appeal No. 14 of 2001

MS SUNITA S MENON for Petitioner No. 1

MR BD DESAI AGP for Respondents No. 1-2

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 26/11/2001

ORAL JUDGEMENT

Heard Ms. Menon, learned advocate appearing for the appellant - plaintiff and Mr. Desai, learned AGP for the respondent - State of Gujarat.

2. The appellant - original plaintiff has filed this Second Appeal challenging the judgement and decree passed by the learned Extra Assistant Judge, Junagadh dated 18th September, 1989 passed in Regular Civil Appeal No. 109/94, wherein, the Appellate Court has on examining the judgement and decree passed by the learned Trial Judge in Regular Civil Suit No. 89/97 filed by the appellant original plaintiff has allowed the appeal and set aside the judgement and decree passed by the learned trial Judge. Ms. Menon, appearing for the appellant original plaintiff while arguing the matter has taken me through the judgement under challenge as well as the judgement passed by the learned trial Judge decreeing the suit of the plaintiff and she contended that the Appellate Court has committed error while allowing the appeal filed by the respondent - defendant by setting aside the decree passed in favour of the appellant-plaintiff, wherein, the trial Court has held by granting declaration and permanent injunction that the order passed by D.S.P. Junagadh dated 8th December, 1986 is illegal, unconstitutional and violative of Article 311(2) of the Constitution of India and the learned Trial Judge has restrained the defendant from preventing the appellant plaintiff in taking training as police constable at Baroda. She has also referred to the decision, which are dealt with by the learned trial Judge as well as by the Appellate Court and submitted that the appeal filed by the present appellant be allowed by setting aside the order passed by the learned Extra Assistant Judge and restore the judgement and decree passed by learned Civil Judge (SD) Junagadh dated 2.1.1991 passed in Regular Civil Suit No. 89 of 1997. As the notice was issued to the respondents, Mr. B.D.Desai, learned AGP was appeared and supported the judgement of the Appellate Court. It is his contention that the order passed by the DSP Junagadh dated 8th December, 1986 is legal and when the Appellate Court has examined the evidence as well as judgement under challenge passed by the learned Trial Judge has rightly allowed the appeal filed by the State by setting aside the judgement and decree passed by the learned Trial Judge. He accordingly, submitted that appeal filed by the present appellant - plaintiff be summarily dismissed.

3. It is the case of the appellant - plaintiff that he was recruited in the police force as constable as per the order passed by DSP, Junagadh in the month of July, 1984. The order of appointment indicates that his appointment was purely on temporary basis and his services can be terminated even without any notice. He

resumed his duties and after resuming his duties, he was sent for training at P.T.S. College, Baroda. It is the case of the appellant - plaintiff that during the training period, he received the information that his mother is sick and accordingly, he proceeded for leave for four days. He over stayed for a period of four days and he reported for training at Baroda with a medical certificate about the illness of his mother. It is the case of the appellant - plaintiff that the principal of the collage has not permitted the appellant - plaintiff for training and he was sent back to the Junagadh and he gave the plaintiff a sealed cover to hand over to the D.S.P. It is the case of the plaintiff that he had handed over the sealed cover to the Superintended of Office of the D.S.P. and as he was told that necessary communication will be received by him, he accordingly proceeded to Mendarda at the place, where he was residing. As found from the observations made by the learned Judge that the DSP Junagadh had issued discharged order and the said order was sent for execution in favour of the plaintiff through Home Police Inspector and the said discharge order was issued by DSP was refused by the present appellant-plaintiff.

4. As found from the order issued by the DSP, it shows that on 12th December, 1986 the DSP has discharged the appellant - plaintiff by giving one month notice and one month notice pay and it further shows that the order of discharge was passed on 5th December, 1986 and as the plaintiff has refused to accept the same, by another order dated 12th December, 1986, the DSP has discharged the plaintiff and the DSP has recorded that as the order of discharge was refused by the delinquent, which was sent for service through Home Police Inspector, the services of the plaintiff with one month notice pay was come to an end with effect from 11th December, 1986.

5. It is the case of the appellant that this order of termination is challenged by way of filing suit before the court of learned Civil Judge, Junagadh and the appellant - plaintiff has sought for declaration and permanent injunction that the order of discharge was passed illegally and without hearing him and prayed for consequential reliefs of reinstatement in service. The suit was filed in the year 1987. The learned trial Judge has after hearing the parties and after considering the evidence led by the parties has held that the plaintiff has proved that the order passed by the respondent no. 2 namely DSP Junagadh is illegal and unconstitutional and further that even the grounds for remaining absent in training, the plaintiff has sufficient cause and

accordingly, the learned Trial Judge has passed decree in favour of the plaintiff by setting aside the order of discharge dated 8th December, 1986 by holding that the same is illegal and unconstitutional and violative of Article 31(2) of the Constitution of India and the defendants be restrained from preventing plaintiff in taking training as Police Constable at Baroda. The suit was decreed with costs in favour of the plaintiff.

6. Being aggrieved by the said judgement and decree passed by the Trial Court, the State has preferred appeal before the Appellate Court on several grounds. The learned Extra Asst. Judge, Junagadh after examining the judgement and order passed by the learned Trial Court and in light of the citations referred to before him by the parties and considering the evidence has held that in view of the fact that the appointment of the plaintiff was purely on temporary basis and the discharge order passed by the authority, which was held by the learned Trial Judge illegal is not legal and proper and accordingly, the Appellate Court has allowed the appeal of the State and set aside the decree of declaration and injunction granted in favour of the plaintiff by dismissing the suit.

7. Ms. Menon, learned advocate appearing for the appellant - plaintiff has while taking me through the judgement has heavily relied upon the findings recorded by the learned Trial Judge, which was according to her was made on evidence and according to her when the trail Court has decreed the suit by holding that the order of termination passed by the DSP was illegal and unconstitutional and the said order was passed without giving any opportunity to the plaintiff, according to her the Appellate Court was not justified in setting aside the said decree. It is an admitted fact that the appointment of the appellant - plaintiff was purely on temporary basis and on ad-hoc basis and that too in a police force, the appellant - plaintiff is required to undergo training as per the Rules and the person has to send for training at PTS College at Baroda and after completing training one has to appear for examination. It is an admitted fact that the appellant - plaintiff though was sent for training at PTS College, Baroda has not completed training and the reasons for which is that he was required to attend to his mother, who was sick at Mendarda. It is the case of the plaintiff that he has applied for leave for four days but there is nothing on record to show that the leave was sanctioned. Further even after the expiry of the four days, the plaintiff had over stayed for a period of about four days and the

plaintiff had approached the Principal of PTS College, Baroda with all medical certificate of illness of his mother and his over stayed was based on the same ground, for which, he was required to be awayed from training and nearby to his mother. It is found that from day one, he was not permitted to continue with the training and he was sent back at the office of the DSP, Junagadh with an envelope. DSP Junagadh has simply passed termination order by giving one month notice with one month salary. The discharge order issued by the DSP on 5th December, 1986 was refused by the present appellant - plaintiff and another order dated 12th December, 1986 was issued indicating the fact that the plaintiff has refused the earlier order, which was sent for service through Home Police Inspector and the services of the appellant-plaintiff was discharged with effect from 11th December, 1986 by giving one month salary. As found from the judgment of the trial Court, the trial Court has considered the various judgements of this Court as well as of the Apex Court. The Appellate Court has while allowing the appeal of the State and in term held that the order of discharge issued by DSP is legal and considering the order of appointment of the plaintiff, which was purely on temporary basis and the discharge order, which was issued was legal and accordingly, held that the learned Trial Judge was not right in holding that the order of discharge, which was passed by the DSP is illegal but considering the arguments and reasoning adopted by the learned Extra Asst. Judge, I see no reason to interfere with the reasoning adopted by the Appellate Court and the Appellate Court has rightly set aside the judgement and decree of the Trial Court. Even I am required to observe that at the time when the plaintiff was appointed, he was eligible for getting appointment and that appointment was also on temporary basis. The appellant - plaintiff was required to complete the requisite training and also required to clear the said training. In the present case, even after the discharge order was passed in the year 1986 and as observed earlier, the appellant- plaintiff has refused to accept the order of discharge of the DSP has approached the trial Court on 4.2.1987 and even when the suit was decreed by the learned Trial Judge in the year 1991, the learned trial Judge was not right by giving said declaration by directing that the plaintiff may not prevented from taking training as Police constable at Baroda as the training was not completed and further looking to the fact that when the suit was decreed, the plaintiff was not eligible to absorb in a Government service.

8. With above observations, this Second Appeal was required to be dismissed. Notice is discharged. However, there will be no order as to costs.

(D.K. Trivedi, J.)

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